

## Federal Personnel Manual System

### FPM Bulletin

Bulletin No. 920-14

Washington, D. C. 20415  
April 30, 1979

**SUBJECT:** OPM Proposed Regulations--Part 317

Heads of Departments and Independent Establishments:

AN INFORMATION NOTICE ON CHANGES TO  
THE CODE OF FEDERAL REGULATIONS IS  
ATTACHED TO THIS BULLETIN. THE  
NOTICE MUST BE POSTED IN A PROMINENT  
PLACE.

1. The Director of the Office of Personnel Management (OPM) is required to take steps to ensure that OPM regulations which apply to individuals or organizations outside OPM are posted in offices of Federal agencies maintaining copies of Federal personnel regulations (5 USC 1103(b)(2)(A)).
2. To carry out this responsibility, OPM has issued Special Transition Regulation Number 1, January 11, 1979, which requires agencies to (1) make available for review on request the regulatory material which appears as attachment I to this bulletin; and (2) complete and post in a prominent place the notice which appears as attachment II to this bulletin. Completion of the notice requires only the insertion of the room number where the regulations will be available for review.
3. Comments on the attached materials should be addressed to the OPM official whose name and mailing address are listed in the "For further information contact" section of the Federal Register notice.

*Jule Sugarman*

Jule M. Sugarman  
Deputy Director

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**Inquiries:** Executive Personnel and Management Development, 202/ 632-6820

**Code:** 920, Senior Executive Service

**Distribution:** FPM

**Bulletin Expires:** July 20, 1979

[6325-01-M]

**Title 5—Administrative Personnel**

**CHAPTER I—OFFICE OF PERSONNEL  
MANAGEMENT**

**PART 317—APPOINTMENT, REAS-  
SIGNMENT, TRANSFER AND DEVEL-  
OPMENT IN THE SENIOR EXECU-  
TIVE SERVICE**

**Interim Regulations**

**AGENCY:** Office of Personnel Man-  
agement.

**ACTION:** Interim regulation with  
comments invited for consideration in  
final rulemaking.

**SUMMARY:** These interim regula-  
tions implement Sec. 413 of Title IV of  
the Civil Service Reform Act of 1978.  
They cover the conversion of employ-  
ees to the Senior Executive Service.

**DATES:** Effective Date: March 30,  
1979 and until final regulations are  
issued. Comment Date: Written com-  
ments will be considered if received no  
later than May 29, 1979.

**ADDRESS:** Send written comments to  
the Associate Director, Executive Per-  
sonnel and Management Development,  
Office of Personnel Management,  
Room 6R54, 1900 E Street, N.W.,  
Washington, D.C. 20415.

**FOR FURTHER INFORMATION  
CONTACT:**

Ann Ugelow, (202) 632-6820.

**SUPPLEMENTARY INFORMATION:**  
Pursuant to section 553(d)(3) of title 5,  
U.S.C., the Director finds that good  
cause exists for making this amend-  
ment effective in less than 30 days, in  
order to provide continuity of opera-  
tions and to give immediate and  
timely effect to the appropriate provi-  
sions of the Civil Service Reform Act  
of 1978.

A new Part 317 is being added to  
Title 5, Code of Federal Regulations to  
cover appointment, reassignment,  
transfer, and development in the  
Senior Executive Service. Two sub-  
parts of Part 317 are being issued now:

(1) Subpart A consists of the statu-  
tory requirements for conversion to  
the Senior Executive Service, as found

in Section 413 of title IV of the Civil  
Service Reform Act of 1978.

(2) Subpart B consists of regulations  
to implement the conversion process.

Regulations to implement Sub-  
chapter VIII of Chapter 33 of title 5,  
United States Code on appointments  
and other matters, will be issued at a  
later date.

Accordingly, the Office of Personal  
Management is adding interim regula-  
tions to Chapter I, 5 CFR Part 317, as  
set forth below:

**PART 317—APPOINTMENT, REAS-  
SIGNMENT, TRANSFER AND DEVEL-  
OPMENT IN THE SENIOR EXECU-  
TIVE SERVICE**

**Subpart A—Principal Statutory Requirements**

**Sec.**

317.101 Statutory Requirements for Con-  
version.

**Subpart B—Regulatory Requirements of the  
Office of Personnel Management**

317.201 Regulatory Requirements.

317.301 Conversion Coverage.

317.302 Conversion Procedures.

317.303 Status of Employees Who Decline  
Voluntary Conversion to the Senior Ex-  
ecutive Service.

317.304 Conversion of Career and Career-  
type Appointees.

317.305 Conversion of Excepted Appoint-  
ees.

317.306 Conversion of Employees Under  
Time Limited Appointments.

**AUTHORITY:** 5 U.S.C. 1302, Pub. L. 95-454

**Subpart A—Statutory Requirements**

**§ 317.101 Statutory Requirements.**

This subpart sets forth for the bene-  
fit of the user the statutory require-  
ments governing conversion to the  
Senior Executive Service.

Sec. 413. (a) For the purpose of this  
section, "agency", "Senior Executive  
Service position", "career appointee",  
"career reserved position", "limited  
term appointee", "noncareer appoint-  
ee", and "general position" have the  
meanings set forth in section 3132(a)  
of title 5, United States Code (as  
added by this title), and "Senior Ex-  
ecutive Service" has the meaning set  
forth in section 2101a of such title 5  
(as added by this title).

(b)(1) Under the guidance of the  
Office of Personnel Management, each  
agency shall—

(A) designate those positions which  
it considers should be Senior Execu-  
tive Service positions and designate  
which of those positions it considers  
should be career reserved positions;  
and

(B) submit to the Office a written re-  
quest for—

(i) a specific number of Senior Ex-  
ecutive Service positions; and  
(ii) authority to employ a specific  
number of noncareer appointees.

(2) The Office of Personnel Manage-  
ment shall review the designations and  
requests of each agency under para-  
graph (1) of this subsection, and shall  
establish interim authorizations in ac-  
cordance with sections 3133 and 3134  
of title 5, United States Code (as  
added by this Act), and shall publish  
the titles of the authorized positions  
in the FEDERAL REGISTER.

(c)(1) Each employee serving in a po-  
sition at the time it is designated as a  
Senior Executive Service position  
under subsection (b) of this section  
shall elect to—

(A) decline conversion and be ap-  
pointed to a position under such em-  
ployee's current type of appointment  
and pay system, retaining the grade,  
seniority, and other rights and bene-  
fits associated with such type of ap-  
pointment and pay system; or

(B) accept conversion and be ap-  
pointed to a Senior Executive Service  
position in accordance with the provi-  
sions of subsections (d), (e), (f), (g),  
and (h) of this section.

The appointment of an employee in an  
agency because of an election under  
subparagraph (A) of this paragraph  
shall not result in the separation or re-  
duction in grade of any other employ-  
ee in such agency.

(2) Any employee in a position  
which has been designated a Senior  
Executive Service position under this  
section shall be notified in writing of  
such designation, the election required  
under paragraph (1) of this subsec-  
tion, and the provisions of subsections  
(d), (e), (f), (g), and (h) of this section.  
The employee shall be given 90 days  
from the date of such notification to  
make the election under paragraph (1)  
of this subsection.

(d) Each employee who has elected  
to accept conversion to a Senior Ex-  
ecutive Service position under subsec-  
tion (c)(1)(B) of this section and who  
is serving under—

(1) a career or career-conditional appointment; or

(2) a similar type of appointment in an excepted service position, as determined by the Office;

in a position which is designated as a Senior Executive Service position shall be appointed as a career appointee to such Senior Executive Service position without regard to section 3393(b)-(e) of title 5, United States Code (as added by this title).

(e) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under an excepted appointment in a position which is not designated a career reserved position in the Senior Executive Service, but is—

(1) a position in Schedule C of subpart C of part 213 of title 5, Code of Federal Regulations;

(2) a position filled by noncareer executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations; or

(3) a position in the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code, other than a career Executive Schedule position;

shall be appointed as a noncareer appointee to a Senior Executive Service position.

(f) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a career reserved position under subsection (b) of this section shall be appointed as a noncareer appointee to an appropriate general position in the Senior Executive Service or shall be separated.

(g) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a Senior Executive Service position and who has reinstatement eligibility to a position in the competitive service, may, on request to the Office, be appointed as a career appointee to a Senior Executive Service position. The name of, and basis for reinstatement eligibility for, each employee appointed as a career appointee under this subsection shall be published in the FEDERAL REGISTER.

(h) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under a limited executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations, shall—

(1) be appointed as a limited term appointee to a Senior Executive Service position if the position then held by such employee will terminate within 3 years of the date of such appointment;

(2) be appointed as a noncareer appointee to a Senior Executive Service position if the position then held by such employee is designated as a general position; or

(3) be appointed as a noncareer appointee to a general position if the position then held by such employee is designated as a career reserved position.

(i) The rate of basic pay for any employee appointed to a Senior Executive Service position under this section shall be greater than or equal to the rate of basic pay payable for the position held by such employee at the time of such appointment.

(j) Any employee who is aggrieved by any action by any agency under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of title 5, United States Code (as added by this title). An agency shall take any corrective action which the Board orders in its decision on an appeal under this subsection.

(k) The Office shall prescribe regulations to carry out the purpose of this section.

#### **Subpart B—Regulatory Requirements of the Office Of Personnel Management**

##### **§ 317.201 Regulatory requirements.**

This subpart contains the regulations of the Office of Personnel Management which implement subchapter VIII of chapter 33 of title 5, U.S.C. and section 413 of title IV of the Civil Service Reform Act of 1978.

##### **§ 317.301 Conversion coverage.**

(a) *When applicable.* These conversion provisions apply during:

(1) The initial conversion to the Senior Executive Service to be completed by July 13, 1979; and

(2) Conversion to the Senior Executive Service following revocation of a Presidential exclusion under 5 U.S.C. 3132(e).

(b) *Employees covered.* This subpart covers:

(1) An employee serving in a position at the time it is designated a Senior Executive Service position;

(2) An individual appointed or reinstated to a position after it has been designated a Senior Executive Service position;

(3) An employee transferred, promoted, voluntarily reassigned or voluntarily demoted to a position after it has been designated a Senior Executive Service position;

(4) An employee involuntarily reassigned or involuntarily demoted to a position after it has been designated a Senior Executive Service position; and

(5) An employee serving in a position which meets the grade level but not the functional criteria for designation as a Senior Executive Service position.

(c) *Employees excluded.* The following employees are excluded from coverage of this subpart and are not entitled to conversion to the Senior Executive Service.

(1) An employee in a position designated as Senior Executive Service who is serving under a time limited appointment which will terminate before the operational date of the Senior Executive Service.

(2) An employee serving under a temporary promotion, detail, or temporary assignment in a position designated as Senior Executive Service unless the position which the employee encumbered on a permanent basis just prior to the current temporary action has been designated as Senior Executive Service.

##### **§ 317.302 Conversion procedures.**

(a) *Employees appointed prior to designation; employees involuntarily reassigned or demoted after designation—*(1) *Notice.* Each employee covered by this subpart who was appointed prior to the designation of his or her position as a Senior Executive Service position, or who was involuntarily reassigned or involuntarily demoted to a position after it was designated a Senior Executive Service position, shall be given a written notice which includes the following information:

(i) A statement that the employee's position has been designated as either "general" or "career reserved";

(ii) A statement that the employee is being offered an appointment under the Senior Executive Service or that the employee is not being offered an appointment under the Senior Executive Service but will be separated from the civil service pursuant to § 317.305(b)(4) or § 317.306(b)(4);

If the employee is offered conversion, the notice shall also include:

(iii) A statement that the employee has 90 calendar days from the date of receipt of the written notice to elect either to join the Senior Executive Service or to remain in his or her current appointment system;

(iv) Identification of the position, SES pay rate, and kind of appointment which the employee will receive if the employee elects to convert to the Senior Executive Service;

(v) For excepted appointees who have reinstatement eligibility to a position in the competitive service, a statement that the employee may re-

quest conversion to career appointment;

(vi) For employees under limited executive assignment who have reinstatement eligibility to a position in the competitive service and who are covered under § 317.306(b)(3), a statement that the employee may request conversion to career appointment;

(vii) A summary of the features of the Senior Executive Service (this can be accomplished by appending descriptive material prepared by the Office);

(viii) A statement that the employee must submit his or her decision with regard to paragraphs (a)(1)(iii), (v) and (vi) of this section, in writing, on or before the end of the notice period; and

(ix) A statement of the employee's right to appeal an action under this subpart to the Merit Systems Protection Board.

An employee whose involuntary reassignment or involuntary demotion to a designated position occurs less than 90 days before the operational date of the Senior Executive Service, shall be given this notice at the time of the personnel action. The employee shall have 90 calendar days from the date of receipt of the notice to make an election on conversion.

(2) *Pay.* Pay shall be set at an authorized SES pay rate. The pay rate given to an employee upon conversion shall not be less than the employee's basic payable salary just prior to conversion. An employee's payable salary upon conversion is subject to pay limitations, if any, imposed by chapter 53 of title 5, United States Code, or other statutes.

(3) *Freedom of choice.* The employee shall decide whether he or she accepts conversion to the Senior Executive Service. The employing agency shall not attempt to influence the employee's decision through coercion, intimidation or duress.

(4) *Employee's election.* On or before the end of the notice period, the employee shall signify in writing his or her decision to accept or to decline an appointment under the Senior Executive Service. An excepted or limited assignment employee covered under § 317.305(b)(3) or § 317.306(b)(3), respectively, shall also indicate whether he or she request conversion to career appointment. Failure to respond shall be deemed declination.

(b) *Employees receiving appointments after designation but before the operational date of the Senior Executive Service.*—(1) *Condition of appointment.* Each individual appointed, reinstated, transferred, promoted, voluntarily reassigned or voluntarily demoted to a position after it has been designated a Senior Executive Service position shall be required to accept conversion to the Senior Executive

Service. The agency shall advise the individual of this requirement prior to the appointment or other personnel action. The individual shall signify his or her acceptance of conversion in writing at the time of the personnel action.

(2) *Notice.* At the time of the personnel action, or 90 days before the Senior Executive Service becomes operational, whichever is later, the agency shall give the employee a written notice which identifies the position, SES pay rate, and kind of appointment the employee will receive under the Senior Executive Service.

(3) *Pay.* Pay shall be set at an authorized SES pay rate. The pay rate given to a Federal employee who enters the Senior Executive Service without a break in service shall not be less than the employee's basic payable salary just prior to his or her entry into the Senior Executive Service. An employee's payable salary under the Senior Executive Service is subject to pay limitations, if any, imposed by chapter 53 of title 5, United States Code, or other statutes.

(c) *Employees whose positions are not designated Senior Executive Service positions.* *Notice.* Each employee covered by § 317.301(b)(5) shall be given a written notice advising the employee that his or her position is not designated a Senior Executive Service position; that the employee is not entitled to conversion to the Senior Executive Service; and that the employee has a right to appeal an action under this subpart to the Merit Systems Protection Board.

§ 317.303 Status of employees who decline voluntary conversion to the Senior Executive Service.

(a) An employee who declines conversion pursuant to § 317.302(a)(4) shall remain in his or her current appointment and pay system, and shall retain the grade, seniority, and other rights and benefits associated with such type of appointment and pay system. The employee may continue in the current SES position or be reassigned to another position within or outside the Senior Executive Service.

(b) The assignment of an employee who declines conversion under this subpart shall not result in the separation or reduction in grade of any other employee in the agency.

(c) Nothing in these regulations affects an agency's right to terminate a limited executive appointment pursuant to Civil Service Rule IX.

§ 317.304 Conversion of career and career-type appointees.

(a) *Coverage.* This section covers employees serving under:

(1) A career or career-conditional appointment; or

(2) A similar type of appointment in an excepted service position, as determined by the Office.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be converted to a Senior Executive Service career appointment. The employee may be assigned to either a "general" or a "career reserved" position.

§ 317.305 Conversion of excepted appointees.

(a) *Coverage.* This section covers employees serving under an excepted appointment in a position:

(1) In Schedule C of Subpart C of Part 213 of Title 5, Code of Federal Regulations;

(2) Filled by noncareer executive assignment under subpart F of Part 305 of Title 5, Code of Federal Regulations;

(3) In the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code, other than a career Executive Schedule position; or,

(4) Filled under an authority equivalent to paragraph (a) (1), (2), or (3) of this section.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be subject to one of the following actions.

(1) If the employee's position is designated a "general" position, the agency may convert the employee to a Senior Executive Service noncareer appointment. The employee may be assigned only to a "general" position.

(2) If the employee's position is designated a "career reserved" position, the agency may convert the employee to a Senior Executive Service noncareer appointment and assign the employee to a "general" position. The employee cannot remain in a "career reserved" position.

(3) If the employee has reinstatement eligibility to a position in the competitive service, the employee may request conversion to a career appointment. Such request must be made on or before the end of the notice period.

(i) If the request is approved by the Office, the agency will convert the employee to a Senior Executive Service career appointment. The employee may be assigned to a "general" or a "career reserved" position.

(ii) If the employee's request for conversion to career is not approved by the Office, or if the employee elects not to make such a request, the agency will convert the employee to a Senior Executive Service noncareer appointment. The employee may be assigned only to a "general" position.

(4) In lieu of action under paragraph (b) (1), (2), or (3) of this section, the agency may separate the employee from the civil service.

**§ 317.306 Conversion of employees under time limited appointments.**

(a) *Coverage.* This section covers employees serving under:

(1) A limited executive assignment under Subpart E of Part 305 of Title 5, Code of Federal Regulations; or

(2) A similar type of time limited appointment in an excepted service position.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be subject to one of the following actions.

(1) If the position in which the employee is serving under a limited executive assignment or similar type of time limited appointment will terminate within three years from the date of the proposed conversion action, the agency may convert the employee to a Senior Executive Service limited term appointment.

(2) If the position in which the employee is serving under a limited executive assignment or similar type of time limited appointment will not terminate within three years from the date of the proposed conversion action, the agency may convert the employee to a Senior Executive Service noncareer appointment and assign the employee to a "general" position. The agency may not assign the employee to a "career reserved" position.

(3) If the employee under a limited executive assignment has reinstatement eligibility to a position in the competitive service, and if immediately prior to the limited executive assignment and without a break in service the employee served under a career appointment in a position now being designated a Senior Executive Service position then the employee may request conversion to a career appointment. Such request must be made on or before the end of the notice period.

(i) If the employee requests conversion to career, the agency will convert the employee to a Senior Executive Service career appointment. The employee may be assigned to a "general" or a "career reserved" position.

(ii) If the employee does not request conversion to career, the agency will convert the employee as provided for in paragraphs (b) (1) and (2) of this section.

(4) In lieu of action under paragraph (b) (1), (2), or (3) of this section, the agency may separate the employee from the civil service.

OFFICE OF PERSONNEL  
MANAGEMENT,  
BEVERLY M. JONES,  
*Issuance System Manager.*

MARCH 27, 1979.

[FR Doc. 79-9753 Filed 3-29-79; 8:45 am]

FEDERAL REGISTER, VOL. 44, NO. 63—FRIDAY, MARCH 30, 1979

OFFICE OF PERSONNEL MANAGEMENT

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\* NOTICE \*  
\* INFORMATION NOTICE ON CHANGES TO \*  
\* TITLE 5 OF THE CODE OF FEDERAL \*  
\* REGULATIONS \*  
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THE OFFICE OF PERSONNEL MANAGEMENT IS ISSUING REGULATIONS  
ON:

Title and Citation

Part 317, Conversion of employees to the Senior  
Executive Service.

Effective Date:

March , 1979

Effect of Changes:

A new Part 317 is being added to Title 5, Code of  
Federal Regulations. Ultimately, Part 317 will  
cover appointment, reassignment, transfer, and  
development in the Senior Executive Service, as  
well as conversion to the Senior Executive Service.

These interim regulations implement Sec. 413 of  
Title IV of the Civil Service Reform Act of 1978.  
They cover the conversion of employees to the  
Senior Executive Service. Regulations on appoint-  
ments and other matters will be issued at a later  
date.

A COPY OF THE COMPLETE TEXT OF THESE CHANGES AS THEY APPEAR-  
ED IN THE FEDERAL REGISTER IS AVAILABLE FOR REVIEW IN ROOM  
\_\_\_\_\_. COMMENTS ON THESE CHANGES SHOULD BE ADDRESSED  
TO:

Associate Director, Executive Personnel and Manage-  
ment Development, Room 6R54; Office of Personnel  
Management, Washington, D.C. 20415.

For further information contact Ann Ugelow, (202)  
632-6820.

THE DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT (OPM) IS  
REQUIRED TO TAKE STEPS TO ENSURE THAT OPM REGULATIONS WHICH  
APPLY TO INDIVIDUALS OR ORGANIZATIONS OUTSIDE OPM ARE POSTED  
IN FEDERAL AGENCIES MAINTAINING COPIES OF THE FEDERAL PER-  
SONNEL REGULATIONS. (5 USC 1103(b)(2)(A)) THIS NOTICE,  
WHICH SHOULD BE POSTED IN A PROMINENT PLACE, CARRIES OUT  
THAT REQUIREMENT.

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